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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/862,039	05/22/1997	DAVID G. BIRD		2929

7590 05/24/2007  
DONALD S DOWDEN  
COOPER & DUNHAM  
1185 AVENUE OF THE AMERICAS  
NEW YORK, NY 10036

EXAMINER

ISSING, GREGORY C

ART UNIT	PAPER NUMBER
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3662

MAIL DATE	DELIVERY MODE
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05/24/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.



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**MAILED**

**MAY 24 2007**

**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

**GROUP 3600**

Application Number: 08/862,039  
Filing Date: May 22, 1997  
Appellant(s): BIRD, DAVID G.

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William Pelton  
For Appellant

**SUPPLEMENTAL EXAMINER'S ANSWER**

Responsive to the remand of 11/20/06 under 37 CFR 41.50(a)(1) for further consideration of a rejection, a supplemental Examiner's Answer which does not set forth a new rejection is set forth below: the Board requests consideration of the following –

“Was the prosecution history as a whole examined in determining whether reissue recapture applies?”

“In particular, do the '580 Patent claims that ultimately issued include the allegedly surrendered subject matter, and if not, how does this impact the alleged surrender?”

**ARGUMENTS**

The prosecution history as a whole has been considered in the instant reissue application 08/862,039, filed 5/22/1997, including the prosecution histories of (1) parent application 07/978,272, filed

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11/18/1992, issued as Patent number 5,418,537 on 5/23/1995, and (2) related, continuation-in-part application 08/396,977, filed 3/1/1995, issued as Patent number 5,777,580 on 7/7/1998. The claims allowed in the related C-I-P patent are directed to an invention having a different scope than the parent patent. Each of the allowed claims of the C-I-P were amended to specify an IS responder that is part of an LAN station in a WAN/LAN communications network, and further specify that the LAN station comprises a LAN packet or cellular radio that communicates using a frequency range with an(d) is part of, a WAN network that serves a geographic region in which the vehicle is likely to be located (page 13 of response 12/22/97). Additionally, the applicants argued (page 15 of the same response) that none of the prior art references suggested the following features of the claims:

- at least one of the IS receiver and the IS responder is part of an LAN station
- in a WAN/LAN communication network
- and the LAN station comprises an LAN packet or cellular radio
- that communicates using an FCC-unlicensed frequency range
- with, and is part of, a WAN network
- that serves a geographic region in which the vehicle is likely to be located.

In response to an Examiner's amendment the language "an FCC un-licensed frequency range" was amended to read "a frequency range". Thus, the claims of the C-I-P were allowed for reasons separate from the reasons for which the parent application were allowed.

In view of the difference in scope of the claims of the parent and C-I-P applications, the Patent claims of 5,777,580 do not impact the surrendered subject matter of the parent application with respect to the improper recapture of broadened claimed subject matter of the claims in the reissue application.

Appellant may file another reply brief in compliance with 37 CFR 41.41 within two months of the date of mailing of this supplemental examiner's answer. Extensions of time under 37 CFR 1.136(a) are not applicable to this two month time period. See 37 CFR 41.43(b)-(c).

A Technology Center Director or designee has approved this supplemental examiner's answer by signing below:

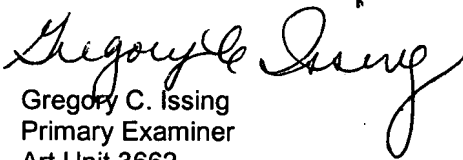


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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory C. Issing whose telephone number is (571)-272-6973. The examiner can normally be reached on Monday - Thursday 6:00 AM- 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Tarcza can be reached on (571)-272-6979. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Gregory C. Issing  
Primary Examiner  
Art Unit 3662

gci